

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FLAVIO CAMERO,

CV F 05-0034 OWW WMW HC

Petitioner,

ORDER DENYING AS MOOT MOTION TO
DISMISS [Doc. 10]
ORDER GRANTING PETITIONER'S MOTION
TO WITHDRAW UNEXHAUSTED CLAIMS
[Doc. 13]

v.

MIKE KNOWLES,

Answer due in 60 days

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302. Pending before the court is Respondent's motion to dismiss the petition on the ground that it contains both exhausted and unexhausted claims in violation of 28 U.S.C. Section 2254(b)(1).

On January 31, 2007, the court entered an order which provided in part as follows:

Petitioner filed the present petition on January 10, 2005. Respondent now moves to dismiss portions of the petition on the ground that the claims are not exhausted. Petitioner has filed a response to the motion to dismiss, in which he merely recites the procedural history of his prior court proceedings. He does not dispute Respondent's contention that some of his claims are unexhausted.

In this case, the court finds that Respondent is correct in arguing that some of Petitioner's claims are unexhausted. Specifically, the claims that are unexhausted are as follows: 1) within ground two, the claims that counsel was ineffective for failing to call

1 particular witnesses and that counsel's actions denied him a speedy trial; 2) ground four; 3)
2 ground five; and 4) ground six.

3 The court granted Petitioner thirty days to inform the court "whether he seeks to withdraw
4 the unexhausted claims and proceed with those that are exhausted *or* withdraw the entire petition
5 and return to state court to exhaust those claims that are unexhausted." The court delayed ruling on
6 Respondent's motion to dismiss the petition in order to allow Petitioner to consider his alternatives.
7 On February 21, 2007, Petitioner filed a motion to withdraw his unexhausted claims. Respondent
8 has not opposed that motion.

9 Accordingly, IT IS HEREBY ORDERED as follows:

10 1) Petitioner's motion to withdraw his unexhausted claims is GRANTED [Doc. 13]; and
11 the following claims are withdrawn: a) within ground two, the claims that counsel was ineffective
12 for failing to call particular witnesses and that counsel's actions denied him a speedy trial; (b)
13 ground four; (c) ground five; and (d) ground six;

14 2) Respondent's motion to dismiss is DENIED as moot [Doc. 10];

15 3) Respondent SHALL FILE an answer to Petitioner's remaining claims within sixty (60)
16 days of the date of service of this order.

17 4) Petitioner is GRANTED thirty (30) days after the receipt of Respondent's answer within
18 which to file a traverse. IT IS SO ORDERED.

19 Dated: May 30, 2007

20 /s/ William M. Wunderlich
21 UNITED STATES MAGISTRATE JUDGE

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